

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF
THE SUPREME COURT OF OHIO**

In re:

Complaint against

**John Brendan Gibbons, Esq.
55 Public Square, Suite 2100
Cleveland, Ohio 44113**

No. 19-051

Attorney Registration No. (0027294)

COMPLAINT AND CERTIFICATE

Respondent,

**(Rule V of the Supreme Court Rules for
the Government of the Bar of Ohio.)**

**James Allen Jenkins, Esq.
55 Public Square, Suite 2100
Cleveland, Ohio 44113**

Attorney Registration No. (0005819)

Respondent,

**Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411**

Relator.

FILED

SEP 27 2019

BOARD OF PROFESSIONAL CONDUCT

Now comes the relator and alleges that John Brendan Gibbons, an Attorney at Law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, John Brendan Gibbons, was admitted to the practice of law in the state of Ohio on November 7, 1975. Respondent Gibbons is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

2. Respondent, James Allen Jenkins, was admitted to the practice of law in the state of Ohio on May 13, 1985. Respondent Jenkins is subject to the Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.
3. In 2002, Cleveland Jackson was convicted of nine felonies, including two counts of Aggravated Murder with Firearm and Death Penalty Specifications, Allen County Court of Common Pleas Case No. CR 2002 0011.
4. On August 5, 2002, Jackson was sentenced to death for his convictions on Counts One and Two of the indictment.
5. Jackson appealed his conviction to the Supreme Court of Ohio. Attorney David Stebbins was appointed to represent him.
6. Stebbins was able to successfully persuade the court to vacate one of the two death sentences.
7. Stebbins also represented Jackson throughout his state post-conviction proceedings.
8. On February 13, 2007, Jackson filed a Notice of Intent to File Petition under 28 U.S.C. 2254 for a Writ of Habeas Corpus and a Motion for Appointment of Counsel before the U.S. District Court for the Northern District of Ohio in *Jackson v. Houk*, Case No. 07-CV-00400. The matter was assigned to Judge Donald Nugent.
9. In his Motion for Appointment of Counsel, Jackson requested that attorneys David Stebbins and Carol Wright be appointed as counsel. Stebbins had represented Jackson in both his direct appeal and his post-conviction petition. Wright represented Jackson in his Ohio R. App. P. 26(B) Application to Reopen.
10. Jackson also sent a letter to Judge Nugent requesting the appointments.
11. On February 16, 2007, Judge Nugent instead appointed respondents to represent Jackson.

12. Pursuant to 18 U.S.C. § 3599(e), respondents were obligated to represent Jackson “throughout every subsequent stage of available judicial proceedings, including...all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and **shall** also represent the defendant in...proceedings for executive or other clemency as may be available to the defendant.” (emphasis added)
13. On March 8, 2007, attorney Stebbins provided seven boxes of records concerning Jackson to respondent Jenkins.
14. On June 26, 2007, respondents filed a Petition for Writ of Habeas Corpus on Jackson’s behalf.
15. On May 1, 2008, the court denied Jackson’s Petition for Writ of Habeas Corpus.
16. On May 23, 2008, respondents filed a Notice of Appeal to the Sixth Circuit Court of Appeals. *Jackson v. Houk*, Sixth Circuit Case No. 08-3677.
17. On June 17, 2008, respondents filed a Motion to Stay Execution Date with the Sixth Circuit, which was granted through the final disposition of the appeal.
18. On June 19, 2009, respondents filed a Request for Issuance of a Certificate of Appealability pursuant to 28 U.S.C. § 2253.
19. On December 17, 2009, The Sixth Circuit Court of Appeals granted a Certificate of Appealability as to nine of Jackson’s claims.
20. On the same day, the court issued a letter to respondents setting the briefing schedule. Jackson’s brief was due on February 16, 2010. The letter further stated that if Jackson’s brief “is filed late, the appeal is at risk of being dismissed for want of prosecution.”

21. On February 16, 2010, respondents filed a motion requesting 30 additional days in which to file Jackson's brief. In that motion, they stated that "[b]oth counsel have been diligently working on numerous Assignments of Error to be submitted" but they needed additional time.
22. On February 17, 2010, the court granted their motion and reset the filing deadline to March 18, 2010.
23. On March 18, 2010, respondents filed a motion seeking to extend the filing deadline to April 2, 2010.
24. On March 19, 2010, the court granted their motion and reset the filing deadline to April 2, 2010.
25. On April 2, 2010, respondents filed a motion seeking to extend the filing deadline to April 16, 2010. In their motion, they stated "[t]he matter is very complex and counsel are diligently working to complete the brief."
26. On April 6, 2010, the court granted their motion and reset the filing deadline to April 16, 2010.
27. On April 16, 2010, respondents filed a motion seeking to extend the filing deadline to April 19, 2010. In their motion, they stated "[t]he matter is very complex and counsel are diligently working to complete the revisions to the final brief over the weekend."
28. By April 19, 2010, the court had not yet granted their motion to extend the deadline.
29. On April 19, 2010, respondents filed a defective brief that was missing citations to the record as required by Federal Rule of Appellate Procedure 28(8)(A).
30. On April 21, 2010, the court sent respondents a briefing letter informing them that they failed to include lower court references and a designation of the record.

31. Respondents were required to file a corrected brief by May 5, 2010.
32. Respondents failed to either seek an extension of the deadline or file the corrected brief by May 5, 2010.
33. On May 13, 2010, respondents filed an untimely motion to extend the deadline, requesting five additional days until May 17, 2010.
34. On May 14, 2010, the court granted respondent's motion and extended the deadline to file the corrected brief to May 17, 2010.
35. Respondents again failed to either seek an extension of the deadline or file the corrected brief by May 17, 2010.
36. On May 18, 2010, respondents filed a motion for leave to file the corrected brief. They provided no explanation for failing to meet the previous deadline.
37. On the same day, respondents also filed the untimely brief; however, they failed to completely correct it as ordered.
38. On May 21, 2010, the court granted respondent's motion for leave; however, the court issued a second briefing letter asking for corrections because the brief still did not contain proper lower court references, among other errors.
39. The corrected brief was due on June 4, 2010.
40. Respondents again failed to either seek an extension of the deadline or file the corrected brief by June 4, 2010.
41. On July 7, 2010, respondents filed an untimely motion for an extension of time in which to file Jackson's brief, asking for ten additional days. The court granted their motion and ordered that the brief be filed by July 19, 2010.

42. On July 19, 2010, respondents filed the corrected brief.¹
43. On July 24, 2012, the Sixth Circuit Court of Appeals affirmed the judgment of the lower court.
44. On November 6, 2012, respondents filed a Petition for a Writ of Certiorari in the Supreme Court of the United States.
45. In 2012, members of the Capital Habeas Unit for the Northern District of Ohio, which is a part of the Federal Public Defender (“ND CHU”), contacted respondent Gibbons and offered to assist as co-counsel with the clemency presentation and any end-stage litigation that might be necessary. Respondent Gibbons refused their assistance without consulting with Jackson.
46. On February 19, 2013, the Supreme Court denied Jackson’s Petition.
47. On March 11, 2013, the State of Ohio filed a motion to set Jackson’s execution date.
48. On August 13, 2013, the Supreme Court of Ohio granted the state’s motion and set Jackson’s execution date for November 17, 2015.
49. Respondents failed to advise Jackson of his execution date.
50. After Jackson’s execution date was set, members of the ND CHU again contacted respondent Gibbons and offered to assist as counsel. Respondent Gibbons made it clear that he did not need or want their assistance and declined their help. Respondent Gibbons failed to consult with Jackson regarding this decision.
51. Jackson had standing to become a plaintiff in Case No. 11-CV-01016 before the United States District Court for the Southern District of Ohio, which is formally known as the Ohio Execution Protocol Litigation (“Lethal Injection Litigation”). In this litigation, the

¹ The docket in this matter demonstrates the government lawyers also requested extensions; however, they requested them well in advance of the deadlines.

plaintiffs, who are on death row, are challenging the execution protocols designed by the State of Ohio.

52. In the Lethal Injection Litigation, there is one “Omnibus” complaint that contains all of the allegations relating to the execution protocol that apply generally to all the plaintiffs. Those complaints are drafted by attorneys employed at offices of public defenders. However, each plaintiff must also file a “supplemental individual complaint” that contains each plaintiff’s individual allegations as they relate to that specific plaintiff. Those allegations can include how each individual’s medical history, current medications, mental health status, etc. would render the current protocol unconstitutional, and those complaints are drafted by the counsel of record for each individual plaintiff.
53. On October 4, 2013, the State of Ohio, the defendant in the Lethal Injection Litigation, filed Defendants’ Notice of Revised Policy Regarding Execution, which contained a new execution protocol.
54. That protocol called for the use of pentobarbital as the primary execution drug. However, if that drug was not available, then the protocol required the use of midazolam and hydromorphone.
55. On October 8, 2013, the court in the lethal injection litigation issued an order scheduling a telephone status conference for October 15, 2013 in order to discuss the new protocol and how it would affect the litigation.
56. Respondents failed to appear for the telephone conference.
57. On October 16, 2013, the court issued an order memorializing the discussion during the October 15th conference and ordered that “any plaintiff who wishes to file an amended supplemental individual complaint shall do so on or before December 13, 2013.”

58. On December 9, 2013, the plaintiffs filed a Motion to Extend Time to File Motions for Leave to File Amended Supplemental Individual Complaints.
59. On December 10, 2013, the court granted the Motion to Extend and ordered that any amended supplemental individual complaints be filed on or before January 27, 2014.
60. On December 16, 2013, a Second Amended Omnibus Complaint was filed in the Lethal Injection Litigation. With that complaint, Jackson formally became a plaintiff in the litigation.
61. By virtue of their appointment as counsel under 18 U.S.C. § 3599(e), respondents were counsel of record for Jackson in the Lethal Injection Litigation.
62. During 2013, respondents failed to discuss the Lethal Injection Litigation with Jackson.
63. On January 16, 2014, the State of Ohio executed Dennis McGuire using midazolam and hydromorphone. The execution took more than 20 minutes and McGuire struggled and gasped loudly for air, making snorting and choking sounds, which lasted for at least 10 minutes, with his chest heaving and his fist clenched. Deep, rattling sounds emanated from his mouth.
64. On January 22, 2014, the parties filed a Joint Motion to Extend the Time to File Initial or Amended Supplemental Individual Complaints. The motion stated, in part, that “[t]hose pleadings require close review of the Plaintiffs’ updated individual medical and mental health records. Most of the medical and/or mental health records produced during this litigation are now more than one year old, however, thus requiring production of updated records by Defendants, and review of those updated records by Plaintiffs’ counsel.” On that basis, the parties requested that the deadline for filing the supplemental individual pleadings be extended to April 1, 2014.

65. On January 23, 2014, the court granted the Motion to Extend.
66. On March 12, 2014, the Plaintiffs filed, and the court granted, Plaintiffs' Unopposed Second Motion to Extend the Time to File Initial or Amended Supplemental Individual Complaints, stating, in part, the following:
- a. The Ohio Department of Rehabilitation and Corrections is conducting an official investigation into matters surrounding the execution of Dennis McGuire on January 16, 2014, and that one of the results of that investigation may be adoption of a new execution protocol;
 - b. Even if a new execution protocol does not result from the McGuire investigation, the contents of Plaintiffs' supplemental individual pleadings will be affected by the contents of any report or reports produced by the investigation; and,
 - c. They requested that the deadline be set 60 days after the report is received.
67. On April 28, 2014, the defendants in the Lethal Injection Litigation filed Defendants' Notice of Revised Policy Regarding Execution, which contained a new execution protocol. This protocol required the use of midazolam and hydromorphone if pentobarbital was not available.
68. On May 27, 2014, the court stayed the State of Ohio from implementing any order for execution until August 15, 2015 based upon the adoption of the new execution protocol.
69. On September 8, 2014, the Governor of Ohio granted Jackson a Warrant of Reprieve, delaying Jackson's execution date until July 20, 2016.

70. Respondents failed to visit or communicate with Jackson during 2014. Thus, respondents neither obtained Jackson's medical records nor discussed the litigation with him and the implications of the McGuire execution.
71. On January 12, 2015, the State of Ohio filed Defendants' Notice of Revised 01-COM-11, which contained a new execution protocol.
72. On June 29, 2015, the State of Ohio filed another Defendants' Notice of Revised 01-COM-11, which contained a new execution protocol.
73. On the same day, the Supreme Court of the United States filed its decision in *Glossip v. Gross*, 135 S.Ct. 2726, in which it reiterated that to challenge a method of execution, an individual must establish that the method presents a risk that is sure or very likely to cause serious illness and needless suffering, and gives rise to sufficiently imminent dangers. It also found that challengers must also identify an alternative that is "feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain."
74. On September 24, 2015, the plaintiffs filed the Third Amended Omnibus Complaint in the Lethal Injection Litigation. There were 95 named plaintiffs, including Jackson. Respondents remained counsel of record.
75. On October 9, 2015, 69 of the named plaintiffs filed Amended Supplemental Individual Complaints.
76. On October 20, 2015, the Governor of Ohio granted Jackson a Warrant of Reprieve, delaying Jackson's execution date until September 13, 2018.
77. During 2015, respondents failed to communicate with Jackson. They failed to discuss the Lethal Injection Litigation and the implications of *Glossip*.

78. On October 7, 2016, the State of Ohio filed Defendants' Notice of Revised 01-COM-11, which contained a new execution protocol.
79. On July 31, 2017, the court ordered the State of Ohio to provide supplemental medical and mental health records of any plaintiff to their counsel, and it ordered that they do so no later than 210 days before any plaintiff's scheduled execution date.
80. Because Jackson's execution was set for September 13, 2018, those records were required to be produced not later than on or about February 16, 2018.
81. The court further ordered that each "[p]laintiff shall then file his motion to amend or supplement his individual complaint not later than thirty days after such records are produced."
82. On September 22, 2017, the plaintiffs filed their Fourth Amended Ominbus Complaint. There were 94 named plaintiffs, including Jackson. Respondents remained counsel of record.
83. During 2016 and 2017, respondents failed to meet with or communicate with Jackson.
84. Because he did not believe that respondents were taking any action on Jackson's behalf, Attorney Randall Porter, an attorney with the Office of the Ohio Public Defender, emailed respondents on February 13, 2018 and offered to obtain the medical release for them. He further stated, "[t]he records then can be used for purpose [sic] of drafting supplemental complaints in the lethal injection litigation...I will not draft the supplemental complaint."
85. On February 14, 2018, respondent Jenkins responded stating, "[i]f we are still his counsel, we will appreciate you obtaining his signature on a release for an updated medical record."

86. On February 15, 2018 Porter met with Jackson and obtained a signed release from him.
87. On February 16, 2018, Porter's office forwarded Jackson's signed release to the Office of Ohio Attorney General to obtain Jackson's records.
88. On March 12, 2018, the Office of Ohio Attorney General emailed respondent Gibbons, providing him with secure links to download Jackson's medical records.
89. Respondent Gibbons failed to download the medical records.
90. Based upon the court's previous order, *see* ¶ 85, Jackson's Individual Supplemental Complaint was due on April 12, 2018.
91. Respondents failed to file Jackson's Individual Supplemental Complaint.
92. On April 16, 2018, the court issued a Notice to Counsel of Record in which it stated, in part, the following:
 - a. It is very important to the Court to ensure that there is a designated trial attorney (see S. D. Ohio Civ. R. 83.4) for every Plaintiff in the case;
 - b. **All counsel of record in the case are ORDERED to examine the list of omitted individual supplemental complaints set forth above and advise the Court and Mr. Bohnert forthwith of the status of their representation of any of those parties.** (emphasis in original);
 - c. All counsel are again advised that a telephone scheduling conference is set for 9:30 A.M. on Tuesday, April 17, 2018. Counsel who have not been regularly participating in these conferences are invited to participate and shall call 1-888-684-8852; Access code: 1931515; Security code: 123456, and wait for the Court to join the conference. Agencies offered to help respondent, but he refused.

93. Respondents failed to take any action based upon the court's Notice.
94. On April 17, 2018, the court held a telephone scheduling conference.
95. Respondents failed to participate.
96. On April 18, 2018, the court issued an Order to Clarify Status of Counsel, stating, in part, the following:

- a. Plaintiff Cleveland Jackson has been represented by attorney John B.

Gibbons who signed the Fourth Amended Omnibus Complaint on his behalf (ECF No. 1252, Page ID 45882). However Mr. Gibbons did not file an Individual Supplemental Complaint on behalf of Cleveland Jackson, did not participate in the scheduling conference, and has not otherwise responded to the Notice to Counsel of Record.

- b. Messrs...Gibbons...shall forthwith advise the Court of the status of their representation of the clients on whose behalf they signed the Fourth Amended Omnibus Complaint. Failure to respond forthwith may result in sanctions.
- c. The local rules of this Court provide two different, mutually exclusive designations for attorneys who enter appearances in a case....in order to avoid confusion...and to be certain that the allocation of responsibility is clear for clients whose lives are at stake, the Court ORDERS that the local rules be strictly complied with in all future filings.
- d. To accomplish this goal, each attorney who has entered an appearance in the case for any Plaintiff will forthwith file with the Court a list of those clients

for whom she or he is the trial attorney and those clients for whom she or he is co-counsel.

97. By May 10, 2018, respondents had failed to comply with the court's Order to Clarify Status of Counsel, failed to comply with the previous Notice to Counsel of Record, and continued to fail to communicate with their client.
98. On May 10, 2018, the court issued an Order to Show Cause to respondent Gibbons, stating, in part, the following:
 - a. As of May 10, 2018, you have still not responded;
 - b. The Court draws your attention to the first definition of "forthwith" in Black's Law Dictionary (10th ed.): "Immediately; without delay." Failure to respond within three weeks does not comport with responding forthwith as this Court understands it.
 - c. You are accordingly ORDERED to show cause in writing not later than May 14, 2018, why you should not be appropriately sanctioned for your failure to comply with the Court's Order of April 18, 2018. (emphasis in original)
99. On May 15, 2018, there was a conference call with the court in the Lethal Injection Litigation beginning at 9:00 a.m. and adjourning at 9:19 a.m. that included, but was not limited to, the following:
 - a. The court taking a role call and determining that respondent failed to appear;
 - b. The court stating, "I have no response to the orders to show cause that were issued last week to Mr. Gibbons....They have been warned multiple times that they are in default for failing to do their duty in this case as counsel for the

folks for whom they appear. So it is my intention to remove them and appoint new trial attorneys in their place;”

- c. The court noting that Jackson has a date in the fall for his execution;
- d. The court stating, “So about the only thing I can do is issue an order that they appear personally, and if they don’t, issue a warrant for their arrests. I mean, lawyers cannot behave this way.
- e. Attorney Vicki Werneke offering to try to contact respondent and the court responding, “I would appreciate your doing that, Vicki. You know, me trying to get a warrant of arrest served on a lawyer by the marshal in the Northern District doesn’t strike me as something that I particularly want to undertake, but I don’t know any other way to get something done.”
- f. The court stating, “let’s see what luck we have getting Mr. Gibbons. I’ve tried to call these guys, too, and I just never get any answers.”

- 100. At 10:40 a.m., Attorney Werneke emailed respondent, indicating that she needed to speak with him regarding the lethal injection case.
- 101. Respondent Gibbons called her and indicated that he thought his response was due on May 16th and that he planned to file a response by that date, but he did not have electronic filing credentials with the Southern District. He stated that his assistant was registering him with the Court for that purpose.
- 102. During the call, respondent Gibbons also stated that he had not taken any action on Jackson’s behalf for years, and he agreed that he and respondent Jenkins should withdraw from the lethal injection case and that the ND CHU should do the clemency since they were more knowledgeable in that area.

103. Respondent Gibbons gave Werneke permission to contact Jackson directly, which she did that same afternoon. Jackson indicated that he had not heard from his attorneys in several years and consented to the change in counsel.
104. Jackson stated that respondents had failed to notify him that the Governor had reset his execution date to September 13, 2018.
105. By this time, respondents had been counsel of record in the Lethal Injection Litigation for Jackson for over four years, but had failed to participate in any conference call, failed to file any pleading on Jackson's behalf, failed to communicate with him for approximately five years, failed to respond to the court's orders, and had not even established electronic filing credentials.
106. During the course of the representation, Jackson mailed multiple letters to respondent Gibbons; however, he failed to respond to Jackson.
107. On the same day, Werneke filed a Motion to Withdraw Trial Counsel and Appointment of New Trial Counsel per respondent Gibbons's authorization. The filing stated, in part, the following:
 - a. [Gibbons] along with Attorney James Jenkins, represented Mr. Jackson in the District Court, before the Sixth Circuit Court of Appeals and before the U.S. Supreme Court on his Federal Habeas litigation.
 - b. The undersigned attorney has not been active in the instant litigation.
 - c. Co-counsel James A. Jenkins was informed of the filing of this written motion to withdraw as counsel for Cleveland Jackson too.

- d. In the rush of other Court proceedings that the undersigned Counsel was involved in for the last several days, the undersigned Counsel misread the date of compliance as May 16, 2018 instead of May 14, 2018.
 - e. Attorney Werneke discussed with Plaintiff Jackson concerning this change in counsel. Plaintiff Jackson consents and joins this request.
108. On May 16, 2018, respondent Gibbons filed a second Motion to Withdraw, in which he made the same representations as in the previous motion, but also included the following:
- a. That “Counsel was unable to file this motion electronically on Tuesday, May 15, 2018 because of a password issue in the ECF system. A new password was issued on this date.”
 - b. The undersigned Counsel will also withdraw from any clemency issues which may arise, so as to permit either the State Public Defender or Federal Public Defender to enter an appearance.
109. Respondent Jenkins failed to file a motion to withdraw.
110. On May 16, 2018, the court granted respondent Gibbons leave to withdraw from representing Jackson in the Lethal Injection Litigation and appointed Attorney Randall Porter, stating, in part, that the “appointment is solely for the purposes of the above-captioned case and does not grant leave to withdraw from representation of Mr. Jackson in clemency proceedings. Leave to withdraw from that representation must be obtained from the judge who appointed Mr. Gibbons in Mr. Jackson’s federal habeas corpus proceedings, over which this Court does not have jurisdiction.”

111. On May 21, 2018, attorney Porter met with Jackson, who indicated that he had not previously been consulted with regarding filing a Supplement Individual Complaint, but wanted one filed on his behalf.
112. Because respondents failed to file an Individual Supplemental Complaint by the court's deadline, Porter was forced to file a Motion Seeking Leave to file one on Jackson's behalf.
113. On May 23, 2018, attorney Porter filed a Motion for Leave to File an Out of Time Individual Supplemental Complaint in which he indicated that he needed two weeks to review Jackson's personal records and draft the complaint. He requested to have until June 4, 2018. The court granted the motion on the same day.
114. On May 29, 2018 Porter's office obtained Jackson's medical records, which had been previously sent to respondents.
115. On June 7, 2018, a Notice of Death Penalty Clemency Hearing on August 9, 2018 was hand-delivered upon Jackson, who personally signed the Notice of Service.
116. On that notice, Jackson was required to indicate who his representative was by choosing either "public defender," "attorney," or "other." Jackson selected other, writing "Don't know who lawyer is."
117. The Notice also asked or advised Jackson that:
 - a. "Upon completion of the hearing and prior to your scheduled execution date, the Parole Board will recommend to the Governor whether or not you should receive clemency;"
 - b. "You may choose a representative to appear for you at the hearing, although you will not be present at the hearing."

- c. “However, you will be afforded the opportunity to be interviewed by the Parole Board prior to the hearing. That interview is scheduled for **July 30, 2018 at 2:00 p.m.**” (emphasis in original);
 - d. “Please indicate on the attached form your selection of a representative at the hearing, as well as whether or not you wish to be interviewed by the Parole board.”
118. By June 13, 2018, despite the court’s order indicating that respondents needed to file to withdraw with the court appointing them for clemency, they had failed to withdraw from representing Jackson.
119. On June 13, 2018, Jackson filed a *pro se* motion with the Sixth Circuit Court of Appeals, seeking substitute counsel.
120. On June 19, 2018, the court granted Jackson’s motion and appointed counsel from the Federal Defender for the District of Arizona.
121. On June 20, 2018, Jackson’s new counsel, attorney Jessica Felker, emailed respondents, provided them with a copy of the appointment order, and requested a copy of Jackson’s file. She indicated that someone from their office would be able to pick it up on June 24, 2018, and she reminded them that Jackson’s execution date was set for September 13, 2018, that his clemency hearing was set for August 9, 2018, and that Jackson’s interview was set for July 30, 2018, stating “time is of the essence.”
122. On June 22, 2018, Jackson’s new counsel filed a Motion for Stay of Execution with the Supreme Court of Ohio. In that motion, they cited that Jackson had been abandoned by respondents.

123. On June 25, 2018, respondent Gibbons replied, stating “I’m in receipt of your recent email. My file consists of the information contained in the public record. I will have to determine if my file is in storage.”
124. On June 25, 2018, respondent Jenkins replied, stating “Similarly, I have little, if anything, substantive outside of the filed docs.”
125. On June 26, 2018, Jackson’s new counsel filed an amended Motion for Stay of Execution in which they included their email exchange with respondents.
126. On June 29, 2018, Jackson’s new counsel again emailed respondents, stating “Attorney Dale Baich will be in Cleveland on Tuesday and Wednesday of next week and would like to pick up your entire file, whatever it contains. We understand that David Stebbins, [Jackson’s] state post-conviction counsel provided you several boxes when you were first appointed. Please let us know who has possession of those boxes.”
127. Respondents failed to respond to the June 29th email.
128. On July 10, 2018, Jackson’s new counsel called both respondents, and left them both messages asking for an immediate response so that they could retrieve Jackson’s file.
129. On July 11, 2018, respondent Jenkins left a voicemail for Jackson’s new counsel, stating that he did not have anything that was not already in the record as far as pleadings and that he did not have any transcripts. He also stated that he did not have any information to share or any documents to turn over.
130. Jackson’s new counsel then spoke with respondent Jenkins and emailed him on July 13, 2018 to memorialize their conversation. In her email, she stated, “I am just writing to confirm the conversation we had on Wednesday, July 11, 2018, regarding Cleveland Jackson’s file. I let you know that our office wanted to pick up your file even if it only contained the public record because we are still compiling the public record at this point.

You informed me that you no longer have a file for Cleveland Jackson's case. You had an associate check your archives, and the associate came up empty. You believe that Mr. Jackson's file may have been one that was purged and shredded because of mold. Please let me know if I have anything incorrect.”

131. By July 13, 2018, respondent Gibbons had failed to respond to Jackson’s new counsel or make arrangements for them to pick up Jackson’s file.
132. On the same day, Jackson’s new counsel emailed and mailed a letter to respondent Gibbons, reminding him of the looming clemency deadline and execution, providing him with a release from Jackson, indicating that they were still trying to compile the public record and that they could use even the publicly available documents he had in his possession, and citing to Prof.Cond.R. 1.16(d), which contains counsel’s ethical obligation to promptly deliver the client file.
133. On July 14, 2018, respondent Jenkins responded to counsel’s previous email memorializing their conversation, stating “Unfortunately, that is accurate. Should I find anything, I will promptly advise you. Good luck with Mr. Jackson's case.”
134. On July 15, 2018, respondent Gibbons emailed a letter to Jackson’s new counsel in which he stated the following:

“Thank you for your gratuitous, asinine, threatening letter dated July 13, 2018. Mr. Jenkins and I are individual practitioners, not supported by the United States taxpayers, such as you and your office. The deadline date cited in your letter is incorrect. Check your calendar. Do you expect me to transport these files by mule train to your office in Arizona? These files are not in my office. These files are kept in an off-site storage facility. To retrieve these files will cost me money.

On Monday, July 16, 2018, I will email to you the charge I will incur to retrieve these files. When you send a representative, that person must bring a certified bank check in the amount of the invoice made payable to “info Store, LLC” to pay for my costs in satisfying your demands. I will take delivery of the check, first, and then your representative can remove the files from my office at a date and time that fits with Mr. Jenkins’ schedule and my schedule. You can reach me with any questions at my email.”

135. On July 16, 2018, respondent Gibbons emailed a service order from InfoStore, LLC to Jackson’s new counsel, along with a letter in which he stated the following:

“You can send someone to my office to pick up the five (5) banker’s boxes. Have the person who is going to physically pick up the boxes, contact me to establish a date and time. Do not have any Attorney from the Federal Public Defender’s Office contact me or my office. Attached is a miscellaneous billing from InfoStore, LLC to recover the files. How are you going to pay this bill? I suggest that your office immediately make payment directly to InfoStore, LLC at the address indicated to provide me with proof of payment.”

136. In response to respondent Gibbons communication, Jackson’s new counsel contacted InfoStore, LLC to arrange payment, and InfoStore informed them that it would cost \$39.69 to retrieve the files, including tax; however, InfoStore could not accept payment from another source based on their billing system.
137. On July 19, 2018, Jackson’s new counsel emailed respondent Gibbons, informing him that they could not pay the company directly, that they had arranged for the assistant of another attorney in respondent Gibbons’s building to pick up the files, and that the

attorney would provide a \$40 check to cover the cost, for which they would reimburse him.

138. The assistant was able to retrieve the file and the law office forwarded the five boxes on July 18, 2018. The boxes contained very little work product.
139. On July 20, 2018, the Governor of Ohio granted Jackson a Warrant of Reprieve, delaying Jackson's execution date until May 29, 2019.
140. On August 1, 2018, Jackson's Motion for Stay of Execution was denied as moot.
141. On March 7, 2019, the Governor of Ohio granted Jackson a Warrant of Reprieve, delaying Jackson's execution date until November 13, 2019.

VIOLATIONS

142. Respondents' conduct, as alleged in Count One, violates the following Rules of Professional Conduct:
 - a. Prof.Cond.R. 1.1 [A lawyer shall provide competent representation to a client];
 - b. Prof.Cond.R. 1.3 [A lawyer shall act with *reasonable* diligence and promptness];
 - c. Prof.Cond.R. 1.4(a)(2) [A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.];
 - d. Prof.Cond.R. 1.4(a)(3) [A lawyer shall keep the client *reasonably* informed about the status of the matter];
 - e. 1.4(a)(4) [a lawyer shall comply as soon as practicable with *reasonable* requests for information from a client];
 - f. Prof.Cond.R. 1.16(d) [As part of the termination of representation, a lawyer shall take steps, to the extent *reasonably* practicable, to protect a client's interest. The steps include giving due notice to the client, allowing *reasonable* time for

employment of other counsel, delivering to the client all papers and property to which the client is entitled.]; and,

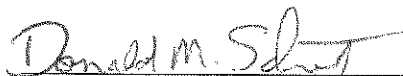
g. Prof.Cond.R. 8.4(d) [engaging in conduct prejudicial to the administration of justice].

CONCLUSION

Wherefore, pursuant to Gov.Bar R. V, the Code of Professional Responsibility and the Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.



Scott J. Drexel (0091467)
Disciplinary Counsel




Donald M. Scheetz (0082422)
Senior Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256
614.461.7205 – fax
Donald.Scheetz@sc.ohio.gov

CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Donald M. Scheetz is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: September 6, 2019



Scott J. Drexel, Disciplinary Counsel